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No. 1368

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

HAROLD C. FOREMAN, APPELLANT
v.
CITY OF BELLEFONTAINE, et al., APPELLEES

ON APPEAL FROM THE COURT OF APPEALS,
LOGAN COUNTY, OHIO, AND
THE SUPREME COURT OF OHIO

HAROLD C. FOREMAN,
124 EAST SPRING AVE.,
BELLEFONTAINE, OHIO
APPELLANT, IN PROPRIA PERSONA

RONALD E. HADLEY,
CITY SOLICITOR,
128 NORTH MAIN ST.,
BELLEFONTAINE, OHIO
ATTORNEY FOR CITY
OF BELLEFONTAINE.

WILLIAM J. BROWN,
ATTORNEY GENERAL OF OHIO,
STATE CAPITOL ANNEX,
COLUMBUS, OHIO
AMICUS CURIAE AND ATTORNEY
FOR COURT OF APPEALS, ET AL.

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IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1970

No. _____

HAROLD C. FOREMAN, APPELLANT

V.

THE CITY OF BELLEFONTAINE, OHIO,
AND
WILLIAM B. SAXBE, ATTORNEY GENERAL
OF OHIO, APPELLEES

ON APPEAL FROM THE SUPREME COURT OF OHIO
AND THE COURT OF APPEALS
THIRD APPELLATE JUDICIAL DISTRICT,
LOGAN COUNTY, OHIO

JURISDICTIONAL STATEMENT

Appellant appeals from the judgment of the Court of Appeals, Logan County, Ohio, reversing the judgment of the Court of Common Pleas, Logan County, Ohio, entered March 2, 1970; the order of the Supreme Court of the State of Ohio dismissing Appellant's appeal entered on the 24th day of September, 1970; the order of the Supreme Court of the State of Ohio denying rehearing entered on the 2nd day of December, 1970; and the judgment and mandate entered on the 25th day of November, 1970, in case No. 70-98, State ex rel, Foreman v. Court of Appeals, et al., an original action in Supreme Court of Ohio for a Writ of Mandamus and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINIONS BELOW

The Journal Entry in the Peters v. City of Bellefontaine, Case No. 25714, dated June 3, 1959, and the Journal Entry in the Foreman, et al., v. City of Bellefontaine, Case No. 26270, entered on the 22nd day of January, 1962, which are part of the record in this appeal, are attached hereto as Appendix A.

OPINIONS AND ENTRIES OF THE LOWER COURTS

The opinion and entry of the Court of Common Pleas, Logan County, Ohio, are not reported. The Minutes and entry of the Court of Appeals are not reported. The order of dismissal and denial of the Supreme Court of Ohio for rehearing are not reported. The Court of Appeals, Logan County, Ohio, refused to prepare and file conclusions of fact separate from conclusions of law. The mandate and opinion of the Supreme Court of Ohio entered on the 25th day of November, 1970, denying petition for Writ of Mandamus in Case No. 70-98, State of Ohio, ex rel. v. Court of Appeals for Logan County et al., will be reported in 24 Ohio St. (2d) _____. All of the foregoing opinions, Minutes and entries are attached hereto as Appendix B.

JURISDICTION

The appeal herein is from a judgment and final order of the Court of Appeals, Logan County, Ohio, reversing the judgment of the Court of Common Pleas, Logan County, Ohio, wherein the trial Court declared Bellefontaine Zoning Ordinance No. 2493 invalid for the reason the Zoning Map which was incorporated into and made a part of said Ordinance was never published as required by law. Grounds therefor are in part as follows: Case of Tirpach, Zoning Adm. v. Marro, et al., 9 0 App. (2d) 76, 38 00 (2d) 73, (1967), with two members of the 3rd District Court of Appeals, (Logan County,) partici-

pating in the unanimous decision in the 7th District Court of Appeals, (Mahoning County), declaring the Zoning Ordinance of the City of Campbell, Ohio, invalid for the reason of failure to publish the Zoning Map as required by law; the publishing twelve years after enactment of the Ordinance a small unreadable Zoning Map, and denial to all the citizens of their right of referendum as provided by law.

The Supreme Court of Ohio dismissed the appeal without considering the substantial Constitutional questions or Motion to Certify the record as required by law and the Rules of Practice of the Supreme Court of Ohio.

In the Case styled State of Ohio, ex rel., Foreman v. Court of Appeals, Logan County, et al., the Supreme Court of Ohio refused to issue a Writ of Mandamus, pursuant to the mandatory provisions of Section 2505.30, Ohio Revised Code, to the respondents therein to state in the record the Court's conclusions of facts separate from the conclusions of law. The above stated Statute is analogous with Federal Civil Rule 52.

The Notice of Appeal herein was filed in the Supreme Court of Ohio and in the Court of Appeals, Logan County, Ohio, on the 11th day of December, 1970, or within 20 days after the entry of the final orders.

The jurisdiction of the Supreme Court of the United States to review these decisions by direct appeal is conferred by Title 28, United States Code, Section 1257 (2).

There is clear indisputable evidence that the Courts and Judges of the Court of Appeals of Logan County, Ohio, and the Judges of the Supreme Court of Ohio joined into a conspiracy with the Attorney General of Ohio and the City Solicitor of Bellefontaine, Ohio, to deny this appellant equal protection of the laws, due process of law, and to deprive him of his business property which abridges the privileges guaranteed by Article

XIV, Section I, of the Fourteenth Amendment to the Constitution of the United States.

The following decisions sustain the jurisdiction of the Supreme Court of the United States to review the judgments on direct appeal in this case: Lathrop v. Donohue, 367 U.S. 820, 825, Largent v. Texas, 318 U.S. 418, Lawrence v. State Tax Commission, 286 U.S. 276, 282-3, Department of Banking v. Pink, 317 U.S. 264, 268, e.g. Williams v. Lee, 358 U.S. 217, 218, Fiske v. Kansas, 274 U.S. 380, 385-6, Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 703, Burns v. Ohio, 360 U.S. 252, 254-7, and the unreported cases of Peters v. City of Bellefontaine, Tirpack, Zoning Adr., v. Maro et al., 9 Ohio App. (2d) 76. (See Appendix) Also see the momentous decision by the Supreme Court of Nebraska in the case of Board of County Commissioners of County of Sarpy v. McNally (1959), 168 Neb. 23, 95 N.W. (2d) 153, which specifically applys to the issues and facts joined herein. Also Am Jur 908.

ORDINANCE AND STATUTES INVOLVED

Ordinance No. 2493, Zoning Ordinance of the City of Bellefontaine, Ohio, Sections 3.23, 713.15, 731.17, 731.19, 731.21, 731.22, 731.26, 2315.25, 2701.11, 4705.01, of the Ohio Revised Code, Article VI, § 2 of the Constitution of the United States, and the Fourteenth Amendment, § I, to the Constitution of the United States, as amended, are set forth in Appendix C hereto.

QUESTIONS PRESENTED

Does Section 713.15, Ohio Revised Code, providing for the taking of privately owned property without due process of law, after the use thereof has been voluntarily discontinued for two years, deprive this appellant of liberty and property in violation of Section I of the Fourteenth Amendment to the Constitution of the United States?

Does the discriminatory double standard of justice in the application of Sections 731.21, 731.22, and 731.26, Ohio Revised Code, deny this appellant equal protection of the laws?

Does the false testimony of the City Solicitor, James B. West, in violation of Section 2315.25, Ohio Revised Code, deny this appellant due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

Is it repugnant to the Fourteenth Amendment to the Constitution of the United States for the Supreme Court of Ohio to refuse to remand the case to the Third District Court of Appeals with an order to state in the record its conclusions of fact separate from the conclusions of law and to refuse to issue a Writ of Mandamus ordering the said Court to state in the record its conclusions of fact separately from the conclusions of law as is mandatory under the provisions of Section 2505.30, Ohio Revised Code. (analogous with Federal Rule 52) (also new Rule 52 of the Ohio Civil Rules Practice, effective July 1, 1970, is analogous with Federal Rule 52)

Is it repugnant to the Fourteenth Amendment to the Constitution of the United States for the Judges and Courts of the State of Ohio involved herein to join in a conspiracy with the City Solicitor, James B. West, of Bellefontaine and the Attorney General of Ohio, Paul W. Brown, to defeat the provisions of Sections 3.23, 2315.25, 2701.11, 4705.01, of the Ohio Revised Code, and the Article VI, Section 2, of the Constitution of the United States and the Fourteenth Amendment, Section I, of the Amendments to the Constitution of the United States?

STATEMENT OF THE CASE

In the year 1927 the business property herein involved

was built and established as a feed mill by Mr. Earl Jamison, Bellefontaine, Ohio, and in December 1948 the business and property was purchased by this appellant; the business was operated until 1955 at which time the business was terminated because of a fraudulent deed issued to adjacent property owners, Mr. and Mrs. Maurice Brugler, stating 75' of frontage instead of 65' as 10' thereof had been sold therefrom by a previous owner and the present owners had taken over the ingres and egress to appellant's business property.

A civil action was commenced against the Bruglers et al. to regain the 10' driveway in question, and in December, 1958, the Court's decision was in favor of the plaintiff, Harold C. Foreman, et al.

This appellant lacked the finances to start the business operation again therefore tried to sell the business property and to each potential buyer received the following reply "I have heard that your property is Zoned residential therefore, it has no value." thereafter, on April 11, 1959, and on April 18, 1959, a purported Zoning Ordinance of the City of Bellefontaine purported to have been passed on September 9, 1957, was published in the Bellefontaine Examiner, a newspaper of general circulation, excepting the Zoning Map was not published.

In October, 1960, this appellant filed his petition in the Court of Common Pleas, Logan County, Ohio, against the City of Bellefontaine, Ohio, setting forth Constitutional issues arising under the Constitution of the State of Ohio and the Constitution of the United States, (see motion to dismiss of appellee Foreman et al., v. City, Case No. 878, October Term, 1962, United States Supreme Court) but Huber A Beery, Judge by Assignment, ordered the case submitted on Stipulations as to facts as he was not going to sit in this hot court room for three days listening to twelve witnesses; on August 1, 1961, the judge returned to

Sidney, Ohio, dictated 23 Stipulations as to fact to Mildred Farley, his personal Secretary, and returned to Bellefontaine, Ohio, on August 11, 1961, and ordered the plaintiff, Harold C. Foreman to subscribe to same, plaintiff refused for the reason the Court had sua sponte made Stipulation No. 23, which is as follows:

> "It is further agreed and stipulated by plaintiffs, plaintiffs not being represented by legal counsel, and the defendant herein, that this case is being submitted solely on the agreed facts as set forth above without any further evidence offered and upon the briefs that are to be submitted by the parties to this action."

also that Stipulations No's 6, 9, and 20 are absolutely false.

Judge Beery said "sign it, this is all the trial your going to get."

Plaintiff then agreed to sign if the Court would add the following words to Stipulation No. 9 "except that the Zoning Map was not published." which he did. The complete 23 Stipulations as to Facts are set forth in Appendix A.

On Stipulation No. 8, Peters v. City wherein the Court declared Ordinance No. 2493 invalid for the reason it had not been published as required by law and issued an injunction against further interference, Judge Beery found that said judgment ruled only as to the effective date of the Ordinance and as to Stipulation No. 9, while the Court is not specific, he finds that the City Council has complied with Sections 715.01, 715.03, 719.01 and 725.01 of the Revised Code, in the enactment of Ordinances.

Section 715.01 provides authority to ###sue and be sued, and aquire property by purchase, gift, devise, appropriation, lease, or lease with the privilege of purchase, for any authorized municipal purpose,***

Section 715.03 provides "Powers by ordinance or resolution."

Section 719.01 provides for "Appropriation of property by municipal corporations." for which such property must be paid for.

Section 725.01 provides for appropriation of property in a blighted area, for which such property must be paid for. however, Sections 725.01 thru 725.11 had been repealed by the Ohio Legislature at the time of the Court's decision in case No. 26270, Foreman et al. v. City. See Appendix A

To determine the issue of failure to publish an Ordinance as required by law upon the merits would necessarily be upon the provisions of Sections 731.21 thru 731.26, Ohio Revised Code.

Section 731.29, provides that a referendum petition be filed "within thirty days after any ordinance or measure is filed with the Mayor", not after publication, therefore, to put any ordinance into effect without publication within thirty days after passage would deny all the citizens of the municipality due process of law.

For the reasons set forth above the second paragraph of the trial Court's opinion, in this case No. 28885, Appendix B, is erroneous, however, a comment by the court not being given any effect or force in law is not appealable or subject to conclusions of fact separate from conclusions of law.

The trial Court is also in error in the third paragraph "In 1967, Tirpach Zoning Admr. v. Marro, et al., 9 0A 2d 76, 38 00 2d 73, was decided. This held that a zoning ordinance, in which the territory was not delineated in the ordinance, was not effective until the map was published." a reading of the case decision in reversing the judgment of the trial court makes no mention of any effective date for the Ordinance.

It is noted in the above decision that the Court of Appeals for the seventh District of Ohio adopted the

decision of the Supreme Court of Nebraska in its decision "5. Invalid legislation confers no rights and imposes no duties of obligations. Legally it is as though it had never been composed or adopted."

On page 33 of the Bill of Exceptions, James B. West, City Solicitor, read from the Stipulations as to Facts, case No. 26270,

Q Would you read it into the record?

A Stipulation No. 9. That the records of the Bellefontaine Examiner indicate Ordinance No. 2493 was published in its entirety on April 11, 1959, and April 18, 1959, except that the zoning map was not published.

On page 34 of the Bill of Exceptions,

Q There is nothing in the journal entry to show the court considered the application of ----

A There is nothing in the journal entry to show they were considered.

The defendant in case No. 28885 pleaded res judacati and the law of the case by way of cross-petition, but the Bill of Exceptions clearly shows a failure to offer any evidence, or prove the contentions. (See Exhibits of defendant page 3 Bill of Exceptions.)

(See plaintiffs Exhibits No. 14 and No. 16 page 2 Bill of Exceptions.)

The judge took out of context the Constitutional questions involving Section 713.15, Ohio Revised Code, in case No. 26270 by sua sponte inserting Stipulation of fact No. 23, deliberately made an error in decision regarding Stipulation of fact No. 8, was silent as to Stipulation No. 9 and ignored the provisions of Section 731.29, Ohio Revised Code.

The Court in case No. 28885 ignored the Constitutional questions involving Section 713.15, Ohio Revised Code, but did declare Ordinance No. 2493 invalid, the judgment being based upon the evidence, facts and

applicable laws, the Court failed to consider the prayer for injunction relief.

In the case of State of Ohio, ex rel., Stulbarg et al., v. Leighton, Commr. et al., 18 00 2d 94 the decision is as follows:

"A zoning Ordinance restricting the use of property, if applied retroactively to deny a use of property which was permitted use under a previous Ordinance, in contravention of the due process clauses of the Federal and State Constitutions, is un-constitutional as to such premises."

The above case was appelled to the Supreme Court of Ohio and dismissed on October 7, 1959, as a moot question.

Section 2317.44, Ohio Revised Code, provides as follows:

EVERY COURT TO TAKE JUDICIAL NOTICE OF CERTAIN STATUTES. Every court of this state shall take judicial notice of the statutes of every state, territory, and other jurisdiction of the United States. The court may inform itself of such laws in such manner as it deems proper, and the court may call upon counsel to aid in obtaining such information.

The determination of such laws shall be made by the court and not by the jury, and shall be reviewable.

Section 2309.29, Ohio Revised Code, provides as follows:

PRESUMPTIONS OF LAW NOT TO BE PLEADED; INCORPORATIONS BY REFERENCE. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in a pleading, but statements in one part of a pleading may be incorporated into another by reference to and adoption therein. In like manner, any part of another pleading, and a copy or exhibit once embodied in or attached to a pleading,

may be referred to and adopted in a subsequent pleading in the same cause.

The defendant, City of Bellefontaine, appealed the judgment of the trial Court in case No. 28885 to the Court of Appeals, Logan County, Ohio, on the 1st day of July, 1969.

The present court of Appeals, Logan County, Ohio, consists of Judges Cole, Jr., Guernsey, and Younger.

Stipulations of Fact No.'s 8 and 9 of Case No. 26270 was before these Judges, Guernsey and Younger, in case No. 1020, together with the false testimony of the City Solicitor, James B. West, wherein the Court refused the appellant his Constitutional right to submit evidence showing perjury in violation of Section 2315.25, Ohio Revised Code, which provides as follows:

Section 2315.25, NO PUBLIC OFFICER OR PRIVATE INDIVIDUAL SHALL:

(A) Swear falsy in an affidavit, or testify falsely upon an inquiry, made as prescribed in Sections 2315.01 to 2315.24, inclusive of the Revised Code;

(B) Willfully violate, prevent, or hinder the execution of such Sections;

(C) Willfully do or omit to do any act with the design to subvert the purposes of such Sections.

The Journal Entry in case No. 1020 reads in part as follows:

"The court finds that transcript and Journal Entries shows that the case was tried and heard by the trial court on a stipulation of facts agreed to under date of August 11, 1961, by and between the defendant-appellee, City of Bellefontaine, and the plaintiff-appellant, Harold C. Foreman; and that the said plaintiff-appellant has not filed herein any Bill of Exceptions showing any hearing or trial other than the on said stipulations of facts although he has alluded in argument to same. The court further finds that there is nothing in the

record before this court including said stipulations of facts to demonstrate that the trial court committed any error prejudicial to plaintiff-appellant in any of the petitions assigned and argued. Judgment of the Court of Common Pleas is hereby affirmed at the costs of plaintiff-appellant, Harold C. Foreman. Cause remanded for execution.

J. Thomas Guernsey, Judge
George S. Middleton, Judge
Raymond A. Younger, Judge

The oath of Office of Judges provides as follows:
Section 3.23, Ohio Revised Code, OATH OF OFFICE OF JUDGES AND OTHER OFFICERS.

"The oath of office of each Judge of a Court of record shall be to support the Constitution of the United States and the Constitution of this state, to administer justice without respect to persons, and faithfully and impartially to discharge and perform all the duties incumbent on him as such Judge, according to the best of his ability and understanding.

The oath of office of every other officer; deputy, or clerk shall be to support the Constitution of the United States and the Constitution of this state, and faithfully to discharge the duties of his office."

The same issue under the same laws was before Judges Guernsey and Younger in case No. 1020 (Stipulation of Fact No. 9) as was before them in the case of Tirpach, v. Maro et al., 9 0 App. 2d 76, (see Appendix D herein) wherein said judges established a standard of justice on the same issue and under the same laws for first class and privileged citizens and a different standard of justice on the same issue and under the same laws for second and lower class citizens who are financially poor. also in the case of State, ex rel., Foreman v. Court of Appeals, et al., case No. 37873, an original action in the Supreme Court of Ohio for a Writ of Mandamus, 175 Ohio St. 534,

wherein Judges Guernsey, Younger and Middleton was representing themselves in propria personae, stated in their brief, pages 3 and 4,

"It should also be noted, at least parenthetically, the action is brought in the name of the State of Ohio (on relation of relator), and that relator is not a licensed attorney permitted to initiate and prosecute a suit on behalf of the State of Ohio without the services of a licensed attorney. He should not be permitted to prosecute this action. See, for instance Otto v. Patterson, Mayor, 173 Ohio St. 174, 18 00 (2d) 441."

See also Burns v. Ohio, 360 U.S. 252, 254-7, which clearly shows the Judges of the Supreme Court of Ohio are genuinely hostile and prejudiced to all middle and lower class citizens who are financially poor.

On July 7, 1969, plaintiff-appellee filed his affidavit of bias and prejudice against Judges Guernsey and Younger in case No. 1072, the present case on appeal, stating therein as follows:

"Harold C. Foreman, being first duly sworn, says that he is a party plaintiff-appellee in this action and that judges Thomas J. Guernsey and Raymond A. Younger judges of the Court of Appeals in and for said County, and before whom this cause will be tried unless there is a change of judges, has a bias and prejudice against this plaintiff-appellee and is disqualified by reason thereof to sit in the trial of this cause.

The aforesaid judges have shown a deliberate and reckless disregard for the Federal Constitution, the Ohio Constitution and the laws thereof when involving this plaintiff-appellee in former litigation as follows: permitted James B. West, City Solicitor, to make deliberate, willfull and knowingly false statements and file same as affirmative pleadings in a former case resulting in the said City Solicitor being excluded from prosecution for perjury for the reason said pleadings was

not verified as required by law; ignored issues related to Section 713.15, Revised Code, resulting in a conflict of decisions by two Ohio Courts of Appeals; see Curtiss et al., v. Cleveland, et al., 110 App. 139; ignored the issue of failing to publish the Zoning Map as required by Sections 731.20 thru 731.26, Revised Code, which goes far beyond a conflict of decisions, but shows a deliberate, willfull and knowing double standard of Justice; see Tirpack, Zoning Admr., Appellee v. Maro et al., Appellants, 9 Ohio App. (2d) 76; and the records of the judges clearly shows that this appellee will not receive justice in accordance with the provisions of the Federal and State Constitutions, or of the laws of the State of Ohio unless he obtains the services of a member of the Bar Association to represent him, all contrary to Section 4705.01, Ohio Revised Code.

Affiant further says that the within affidavit is being filed more than three days prior to the time set for hearing of such matter and before the said judges has an opportunity to sua sponte render a decision in the matter before a hearing."

Harold C. Foreman

On July 22, 1969, judges Guernsey and Younger filed the following Journal Entry:

"The undersigned, being Judges of the Court of Appeals of the Third Appellate Judicial District of Ohio, against whom an affidavit of Bias and Prejudice has been filed by Harold C. Foreman, plaintiff-appellee in this appeal, do not concede and do deny the allegations of the said Harold C. Foreman in his affidavit of Bias and Prejudice, and **particularly deny same because in no proceeding in this court in which the said Harold C. Foreman has been a party has the legality of the zoning of real property owned by said Foreman, or in which he has an interest, been determined**

on its merits. (emphasis added)

Notwithstanding, the undersigned, being parties defendant in an action for damages filed against them and others in the United States District Court for the Southern District of Ohio, Eastern Division, Foreman v. The City of Bellefontaine, et al., Case No. 7644, which case has been pending on appeal from a judgment of said District Court, consider themselves to be otherwise disqualified to sit in any hearing on the merits of this appeal as set forth in Section 2501.12, Revised Code, and will not sit in any hearing on the merits of this appeal. Upon the assignment of this appeal for hearing on the merits request will be made to the Chief Justice of the Supreme Court of Ohio to assign other qualified Judges of the Courts of Appeals of Ohio to hear same.

Raymond A. Younger
J. Thomas Guernsey Judges

The following acts of fraud are clearly set forth in the Bill of Exceptions:

The publishing of a Zoning Map which is non-legible in January 1969, twelve years after the purported enactment of Ordinance No. 2493, and 1 year and 1 month after the petition in case No. 28885 was filed. See page 27, Bill of Exceptions, and plaintiff's Exhibit 1, page 136, Bill of Exceptions which was intended to deceive the Court's and the Citizens of Bellefontaine.

The court's fraudulent decision in case No. 26270, see pages 33, and plaintiff's Exhibit 12, page 142, Exhibits 14, page 144, Plaintiff's Exhibit 16, page 147.

Page 127, Bill of Exceptions, wherein the City Solicitor objected to Mr. Marshall testifying on the ground "He might make an admission."

Page 125, Bill of Exceptions, shows the City Solicitor admitted that he made false statements in violation of Section 2315.25, Ohio Revised Code.

In the Opinion, titled Minutes, of the Court of Appeals, Logan County, Ohio, filed herein on January 20, 1970, the Judges and the Court added their own deceptive fraud to the foregoing stated fraud, as follows:

"that plaintiff-appellee, Harold C. Foreman, failed to file any action or petition to vacate, set aside or modify said judgment in cause No. 26270 on the grounds of fraud or collusion or any of the other grounds as is provided under the law in Section 2325.01, Revised Code; *** there is present in the record all of the essential elements of res judicata and the parties hereto are bound by the judgment in said cause No. 26270;

The record of Case No. 27089, Harold C. Foreman v. City of Bellefontaine, and James B. West, City Solicitor, Common Pleas Court, Logan County, Ohio, shows the petition was filed pursuant to Section 2325.01, Revised Code, alleging fraud, deceit and misrepresentation in case No. 26270, and that said fraud was actually relied on as truth and facts in the judgments upon appeal. The trial Court dismissed the petition on the grounds "that all the appellate courts were fully aware of the allegations of plaintiff herein.", without trial. The decision was appealed to the Court of Appeals, Logan County, Ohio, case No. 1036, and to the Supreme Court of Ohio, wherein all of the Appellate Courts agreed that they were fully aware of all the "fraud" deceit and collusion committed in case No. 26270. All decision were not reported. But see case No. 39043, State ex rel., Foreman v. Common Pleas Court of Logan County, Ohio, et al., Supreme Court of Ohio, 1 Ohio St. 2d 175, which sets forth as follows:

"Appellant then filed a motion to vacate the judgment of the Common Pleas Court, under the provisions of Section 2325.01, Revised Code, alleging that such judgment had been obtained by fraud, deceit and misrepresentation. A motion was filed by defendant to

strike the petition as a sham. The trial court found that the issue of fraud, deceit and misrepresentation has been adjudicated previously in the appeal and dismissed the petition to vacate. Appellant then filed a motion for findings of facts separate from conclusions of law under the provisions of Section 2315.221, Revised Code. This motion was overruled."

30 Am. Jur. 908 is the accepted principle of law for the application of Res Judicata, which is as follows:

The doctrine that an existing final judgment or decree, **rendered on the merits, and without fraud or collusion,** by a court of competent jurisdiction, upon a matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction, on the points and matters in the first suit." (emphasis added)

Good cases in point to cite are the cases of People v. Spaulding, 309 Ill. 292, and Almar F.M. Co. v. F. & W. Metal Co. 308 Ill. App. 151, Wherein the Illinois Supreme Court and the Illinois Appellate Court held as follows:

"From the days of Moses to the present time it has been the law that a person who fabricates, suppresses, or destroys evidence must take the consequences of the honest indignation which his conduct naturally excites. Moses declared, "Cursed be he that removeth his neighbors landmark." Deut. 27, 17. Modern decisions establish the rule that all efforts by either party to a suit, directly or indirectly, to destroy, fabricate, or suppress evidence, may be shown as a circumstance indicating that the party's cause is an unrighteous one."

Every available remedy by way of motion for rehearing, to certify the case to the Supreme Court of Ohio as a conflict in decisions case, motion to state conclusions of

facts separately from the conclusions of law, pursuant to Section 2505.30, Revised Code, which provides as follows:

> Section 2505.30, CONCLUSIONS OF FACT FOUND SEPARATELY FROM CONCLUSIONS OF LAW. On the application of a party, made before the journal entry of a final order, judgment, or decree has been approved by the court in writing and filed with the clerk of the court for journalization, the court **shall** state on the record the conclusions of fact found separately from the conclusions of law. (emphasis added)

On the denial of the above motion a petition for a Writ of Mandamus was filed in the Supreme Court of Ohio, Case No. 70-98, State, ex rel., Harold C. Foreman v. Court of Appeals, Logan County, Ohio et al., wherein the Federal Constitutional issues were fully set forth that the Court was denying due process of law and equal protection of the laws in that appellant could intelligently appeal without knowing the laws and facts upon which the court grounds its decision, further, the Supreme Court of Ohio would not search thru voluminous records to find the facts and laws upon which the court grounds its decision, if any. The decision of the Supreme Court of Ohio on this case is found in the Appendix B herein and as this case is related to the primary case it is included in this same appeal.

On pages 4 and 5 of the appellants brief filed in the appeal to the Supreme Court of Ohio, Case No. 70-212, the following Federal Constitutional questions were set forth:

CONSTITUTIONAL QUESTIONS AND QUESTIONS OF LAW

Section 731.26, Revised, Code, provides as follows:

EFFECT OF NOT MAKING PUBLICATION (GC § 4234)

"It is a sufficient defense to any suit or prosecution under an ordinance, to show that no publication or posting was made as required by sections 731.21 to 731.25, inclusive, of the Revised Code."

The Federal Constitution provides as follows: 14th Amendment, "nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTION: Is it equal protection of the laws when judges of the same court apply the provision of Section 731.26, Revised Code, differently to citizens of the City of Campbell, Ohio, from that imposed upon the citizens of Bellefontaine, Ohio, on the same issues, facts, evidence and under the same applicable laws?

Is it "due process of law" when a Judge deliberately ignors issues, laws, and facts, or otherwise decides issues contrary to laws and facts? See Journal Entry Appendix pages A-8-9 and Journal Entry Peters Case Appendix pages A-6-7.

Section 713.15, Revised Code, prohibits a retroactive zoning ordinance. Is it constitutional for a City to confiscate a privately owned business property in violation thereof?

Is the provision of Section 713.15, Revised Code providing for confiscation of privately owned property if use had voluntarily ceased for two years without compensation being paid therefor constitutional?

It is constitutional for the defendant to enforce an ordinance which they are fully aware was never

before the Council for enactment as required by law and contains provisions contrary to law which they have been and are fully aware of?

Is it contrary to Section 2505.30, Revised Code, when the Court of Appeals denies to state on the record its conclusions of fact separately from conclusions of law when res judicate can only be supported by Facts?

It is a violation of the Ohio Constitution and Section 2505.072, Revised Code, when the Court of Appeal denies the motion of Appellee to certify the records to the Ohio Supreme Court as a conflict of Decisions by two different Courts of Appeals of Ohio? see Tirpack, Zoning Admr. V. Maro, et al., 9 Ohio App. (2d) 73, 38 00 (2d) 76.

It should also be noted that the Court of Appeals has filed only the Minutes in denying this motion which is found in the Appendix page A-18, the Court has failed and refused to file a journal Entry making this issue final.

Harold C. Foreman in propria persona

A case to support jurisdiction of the United States Supreme Court is e.g. WILLIAMS V. LEE, 358, U.S. 217, 218, where the Court granted certiorari both because there was "an important question" and because of a "doubtful determination" by the court below.

There is an old adage which I have always held close to my heart and believe it appropriate to quote herein:

"They drew a circle and shut me out; a heretic, a rebel, a thing to flout. But love, facts, law and I had the wit to win: we drew a circle and took them in."

PRESENTATION OF GROUNDS UPON WHICH IT IS CONTENDED THAT THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

This appellant is not trained in the art of law, he is employed as a interstate truck driver, having an adjusted net income of about four thousand dollars per year, therefore, not high enough to pay the fee demanded by reputable attorneys at law to represent him, and too high to qualify to proceed in Forma Pauperis, therefore, I shall attempt to present myself in this Honorable Court with decorum and dignity.

The appellant respectfully represents that the questions involved in this appeal to the Supreme Court of the United States are of a substantial nature. It is well established that an appeal will not be dismissed for want of a substantial Federal question, unless the contentions of the appellant are "clearly not debatable and utterly lacking in merit." Hamilton v. Regents of University of California, 293 U.S. 245, 258.

The issue raised by appellant's contention that Ohio's Section 713.15, here in question violates the "deprivation of property without due process of law," and denies "equal protection of the laws," of Section I of the Fourteenth Amendment to the Constitution of the United States and involves the problem of discriminatory classification as it provides for the deprivation of a five-hundred thousand dollar residence property which would happen to be classified in a business Zone, or the deprivation of a business property which would be classified in a residential Zone. All of which the State Courts have consistently refused to decide.

Section 109.02, Ohio Revised Code, provides that

the Attorney General "shall appear" for the officers of the State of Ohio; it does not provide that he shall defend such officers against fraud, collusion and misrepresentation and to join with them in a conspiracy, as former Attorney General, Paul W. Brown did in case No. 70-98, which is herein involved.

The issues raised by appellant contention that the false statements by the City Solicitor, James B. West; the deceptive fraud committed by the judges of the Courts of the State of Ohio, with intent to deny the provisions of the Fourteenth Amendment, Section I, to the Constitution of the United States, the refusal of the Supreme Court of Ohio to issue the Writ of Mandamus ordering the Court of Appeals, Logan County, Ohio, to state in the record its conclusions of fact separate from the conclusions of law is a denial of due process of law as the remedy on appeal does not permit the appellant to make an intelligent appeal without knowing the facts and laws upon which the lower Court grounds its decision, and on appeal all that the appellant may look forward to is "remand to the lower court with a Mandate to set forth the conclusions, or a dismissal of the appeal without the Appellate Court having any knowledge without the Appellate Court having any knowledge of the grounds upon which the lower court bases its decision. Is this due process of law? see case No. 70-98 on appeal herein.

This Honorable Court by Rule of Law has decreed that Judges can not be sued, even when corruption is alleged, therefore, if this Court looks upon the fraud and corruption set forth herein with impunity, there will no doubt be a total revolution in this great country before 1976, and not the kind spon-

sored by President Nixon.

This Court's answer to the foregoing questions is not only important to this appellant, but to the millions of second and lower class citizens of this great country.

After hours of research I have found only one case which is related to the issues herein involved; see Lawton v. Steele, 152 U.S. 133, wherein this Court declared: "The Legislature may not, under the guise of protecting the public interest, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations."

The Supreme Court of Ohio has so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure by the lower courts, as to call for an exercise of this court's power of supervision, and two different courts of appeals has rendered conflicting decisions on the same issues under the same laws. (see appendix D)

The Journal Entry in the case of Peters v. City of Bellefontaine, Case No. 25714, Appendix D herein, shows Judge Richard H. Finefrock, of the Common Pleas Court, Logan County, Ohio, declared Zoning Ordinance No. 2493 invalid. On July 11, 1961, Judge Finefrock prepared and filed an appeal from the Bellefontaine Board of Zoning Appeals, in his own Court, Case No. 26458, subscribing the name of E. Herbert Hill and his own name over the words "individually and as agents of other appellants herein." On July 19, 1961, he wrote a two page letter to the Editor of the Springfield Sun, Springfield, Ohio, a newspaper of general circulation, wherein he denied having engaged in

the practice of law in violation of Section 4705.01, Revised Code, thereafter, on April 20, 1964, this appellant prepared and filed a 4 page complaint against him and James B. West, City Solicitor, of Bellefontaine, Ohio, setting forth therein the Judge's violation and the violation of Mr. West of making false statements in violation of Section 2315.25, Ohio Revised Code, with William D. Radcliff, the Administrative Assistant to the Judges of the Supreme Court of Ohio, by virtue of Section 2701.11, Ohio Revised Code. Upon forwarding to the Board of Commissioners of the Ohio State Bar Association, Mr. Radcliff, on the direction of the Judges of the Ohio Supreme Court wrote the following note to John R. Welch, General Counsel of the Ohio Bar Association:

> "John--this fellow has two suits pending in this court now v. Finefrock & the 3d Dist. Ct. of App's *** He's a nut:"
>
> A photo copy thereof in his own handwriting on Supreme Court of Ohio letterhead is filed herewith with the Clerk of this Court as Appellant's Exhibit "A" pursuant to Rule 39 of this Court.

The above clearly shows the Judges of the Supreme Court of Ohio was just as obsessed with the determination then, as now, to destroy the property of Harold C. Foreman, and his good name, dignity and integrity without hearing or trial.

WHEREFORE, appellant respectfully submits that this Honorable Court should summarily decide the Federal Questions herein set forth, reverse the judgment of the Court of Appeals, or as an alternative remand the case to the Court of Appeals, Logan County, Ohio, with a Mandate to state in the record its conclusions of facts separate from the conclusions of law, and for appellants costs herein.

Respectfully Submitted,

Harold C. Foreman,
124 East Spring Ave.,
Bellefontaine, Ohio
In Propria Persona.

Ronald E. Hadley,
City Solicitor,
128 North Main St.,
Bellefontaine, Ohio
Attorney for defendant-appellees

William J. Brown,
Attorney General of Ohio,
State Capitol Annex,
Columbus, Ohio
Defendant and attorney for
Court of Appeals et al.

Appendix A

Ordinance No. 1382, Charles C. Bewley, Service Safety Director, Secretary City Planning Commission.
Notice of Ordinance Sec. 731.20 thru 731.25.
James D. Peters, Plaintiff vs City of Bellefontaine, Defendant, Journal Entry filed June 3, 1959 in Case No. 25714, Journal 58, Page 399.
This matter came on to be heard on the petition of the Plaintiff, James D. Peters, the answer of the Defendant, City of Bellefontaine, Ohio, and statements of counsel, and the Court being fully advised in the premises finds as follows: That the Plaintiff opened and began operating a real estate and insurance agency at 212 E. Sandusky Ave. in the City of Bellefontaine, Ohio, on or about Sep-

tember 1, 1958; that on or about that date ordinance No. 1382 of said City of Bellefontaine was in full force and effect and that by virtue of said ordinance Plaintiff's property at 212 E. Sandusky Ave. was zoned as a business district.

Further that the council of the City of Bellefontaine, did on September 9, 1957, enact Ordinance No. 2493 known as "The City of Bellefontaine, Ohio, Zoning Ordinance", and that said Ordinance has, since the filing of Plaintiffs Petition, to wit: on April 11, 1959 and on April 10, 1959, been published in its entirety in the Bellefontaine Examiner, a newspaper of general circulation in said City of Bellefontaine, Ohio. Further that said Ordinance No. 2493 of the City of Bellefontaine, Ohio by virtue of Section 731.21 et seg. of the Revised Code of the State of Ohio, could not have become effective until ten days after its first publication on April 11, 1959.

The Court finding that the Plaintiff had purchased the premises and had used and occupied the same as a real estate and insurance agency at 212 E. Sandusky Ave. prior to the effective date of said Ordinance No. 2493, it is therefore ordered, adjudged and decreed that the City of Bellefontaine be and hereby is restrained and enjoined from interferring with Plaintiff's use and occupance of said premises for business purposes.

It is further ordered that the defendant pay the costs herein taxed.

R. H. Finefrock, Judge

This day this matter came on to be heard and the parties have mutually stipulated to the facts involved in the case as follows:

6. That the Minutes of the Bellefontaine City Council will show Zoning Ordinance 2493 was passed on its third and final reading September 9, 1957, and signed by the Mayor on September 12, 1957.

8. There there is filed and docketed in the Logan County Common Pleas Court a case styled James D. Peters v City of Bellefontaine, Ohio, which made findings relative to the Ordinance here in question.

9. That the records of the BELLEFONTAINE EXAMINER indicate Ordinance No. 2493 was published in its entirety on April 11, 1959, and April 18, 1959, except that the Zoning Map was not published.

20. That the Ordinance was read on three separate occasions; that upon each occasion the Clerk of Council was assisted in reading the Ordinance by the President of Council and the City Solicitor due to the length of the Ordinance.

21. It is agreed and stipulated that the cases of Foreman v Brugler, Case No. 24318, and Goslee v Foreman, Case No. 26133, in the Common Pleas Court of Logan County, Ohio, are made a part of the record herein.

IN THE COMMON PLEAS COURT

LOGAN COUNTY, OHIO

HAROLD C. FOREMAN and
EDITH L. FOREMAN
Plaintiffs CASE NO. 26270

-vs-

CITY OF BELLEFONTAINE, OHIO
Defendant

JOURNAL ENTRY

This matter came on for hearing on the petition of the plaintiffs, the answer of the defendant, the statements of the parties and the matter was submitted to the court on an agreed stipulation of fact, exhibits and trial briefs; and the court finds as follows: That the plaintiffs own a certain business property at 713 Rush Avenue in the City of Bellefontaine, Ohio, and on January 18, 1950, defendant, City of Bellefontaine, granted to plaintiffs a building permit to remodel these premises for the purpose of

expanding the business; that thereafter, City of Bellefontaine put into effect a Zoning Ordinance No. 2493. The court further finds that plaintiffs do not allege, nor did they prove, that prior to the filing of their petition herein, they made use of the administrative rights available to them under Article 61 of said zoning ordinance. Further, plaintiffs did not prove they had intended to use their property for any specific business. Further plaintiffs have submitted no plans for the future use of this building and are not presently using it for any business purpose.

The court finds from the stipulation of facts and the exhibits that the legislative body of the City of Bellefontaine, Ohio, has clearly followed each and every requirement under Sections 715.01, 715.03, 719.01 and 725.01 of the Revised Code of Ohio for the enactment of a zoning ordinance, and that Bellefontaine Zoning Ordinance is neither invalid, unlawful or unconstitutional.

The court further finds that Case No. 25714 styled, "James D. Peters vs. the City of Bellefontaine, Ohio," which record was made a part hereof by stipulation of the parties, did not undertake to declare Ordinance No. 2493 invalid, but ruled only as to the effective date of the ordinance.

It is, therefore, the finding of this court that the plaintiffs herein must exhaust their administrative remedies under Article 61 of the zoning ordinance before they should be permitted to apply to this court contesting the constitutionality of the ordinance on the basis that the ordinance results in a confiscation of their specific property.

Costs in the amount of $_____ are hereby ordered taxed to the plaintiffs and exceptions saved to the plaintiffs.

Huber Beery, Judge, Common Pleas Court, by assignment

Approved:

Harold C. Foreman for plaintiffs

Attorney for Defendant

IN THE COURT OF COMMON PLEAS
OF LOGAN COUNTY, OHIO.

HAROLD C. FOREMAN,

PLAINTIFF,

vs.

THE CITY OF BELLEFONTAINE, ET AL.,

DEFENDANTS.

CASE NO. 28885

JOURNAL ENTRY.

This cause came on to be heard upon the pleadings and the evidence, and the Court do find that the issues in this case, and in Case Number 26270 are identical; that the purported zoning ordinance was published in 1959 and did not contain a description of the property; that the zoning map was published ten years later, being printed without advising that it was a part of the ordinance, simply appearing in the newspaper; that since the ordinance would be ineffective as to any other litigant, res judicata should not be applied to this case, as it would be of no benefit to defendant.

It is therefore ORDERED, ADJUDGED and DECREED that Ordinance Number 2493 of the City of Bellefontaine be, and it hereby is declared invalid.

Dated this 26th of June, 1969.

EUGENE R. MC NEILL
Judge (By Assignment)

IN THE COURT OF APPEALS OF THE
THIRD APPELLATE JUDICIAL DISTRICT OF OHIO
LOGAN COUNTY

HAROLD C. FOREMAN,
PLAINTIFF-APPELLEE,

vs.

THE CITY OF
BELLEFONTAINE, OHIO,
ET AL.,

DEFENDANTS-
APPELLANTS.

CASE NUMBER 1072

JOURNAL
ENTRY

This matter came on to be heard on the motion of Plaintiff-Appellee to certify the record pursuant to Section 2505.072 of the Revised Code and the Court finds that the judgment made herein by this Court is not in conflict with the judgment pronounced by the Court of Appeals for the Seventh Appellate District of Ohio in the case of Tirpack v. Maro, et al., 9 Ohio App. 2d 76; 38 O. O. 2d 76.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the motion of Appellee to certify record pursuant to Section 2505.072, Revised Code, Article IV, Sec. 3 (B) (4) of the Ohio Constitution and Rule III, Supreme Court Rules be, and the same hereby is, denied at costs of Appellee.

Exceptions saved.

/s/ Ralph D. Cole, Jr.
/s/ Harvey G. Straub
/s/ John W. Potter
JUDGES

ccs:
Mr. Harold C. Foreman, 124 E. Spring, Bellefontaine
Mr. James B. West, 111 South Madriver, Bellefontaine

IN THE COURT OF APPEALS
OF THE THIRD APPELLATE JUDICIAL DISTRICT
OF OHIO LOGAN COUNTY

HAROLD C. FOREMAN,

CASE NUMBER 1072

PLAINTIFF-APPELEE,

vs.

MINUTES

THE CITY OF
BELLEFONTAINE, OHIO,
AND WILLIAM B. SAXBE,
ATTORNEY GENERAL,
DEFENDANTS-
APPELLANTS

TO THE CLERK:

In the above entitled action, enter the following minutes on the Court of Appeals docket as of January 20, 1970, to-wit:

Finding as follows: That the identical parties hereto litigated the same issues in a prior cause, No. 26270, in the Common Pleas Court of Logan County, Ohio, in 1962; that judgment was rendered in said cause No. 26270 in 1962 for the defendant-appellant, City of Bellefontaine, Ohio; that plaintiff-appellee, Harold C. Foreman, failed to file any action or petition to vacate, set aside or modify said judgment in cause No. 26270 man, failed to file any action or petition to vacate, set aside or modify said judgment in cause No. 26270 on the grounds of fraud or collusion or any of the other grounds as is provided under the law in Section 2325.01, Revised Code; that said judgment in cause No. 26270

was not reversed on appeal and exists as a valid judgment; that in this cause No. 28885 of the Common Pleas Court of Logan County, Ohio, there is present in the record all of the essential elements of res judicata and the parties hereto are bound by the judgment in said cause No. 26270; that the trial court in this cause No. 28885 erred by not applying the defense of res judicata on the grounds that the judgment in cause No. 26270 was not res judicata as to all other citizens and residents of Bellefontaine, Ohio. (See 32 O.J. 2d. 102, Section 346, and 64 A.L.R. 1262). On consideration of the labeled cross-appeal filed by the plaintiff-appellee finding that the doctrine of res judicata being dispositive of this appeal, all errors assigned in said labeled cross-appeal are found not well taken or non-prejudicial.

Judgment of the Common Pleas Court of Logan County, Ohio, in cause No. 28885 is reversed at costs of plaintiff-appellee and coming now to render the judgment which should have been rendered in said court, judgment is hereby entered in cause No. 28885 for the defendant-appellant, City of Bellefontaine, Ohio, and the cause is remanded to the Common Pleas Court of Logan County, Ohio, for execution as to costs.

(STRAUB and POTTER, JJ., of the Sixth Appellate District, sitting by designation in the Third Appellate District).

/s/ Ralph D. Cole, Jr.

/s/ Harvey G. Straub

/s/ John W. Potter

JUDGES

(Unless a journal entry in conformity with the above minutes has been filed concurrently therewith, such journal entry must be prepared by counsel for the successful party, submitted to opposing counsel for approval and

submitted to the court for signature and filing, in accordance with the rules of this court.)

IN THE COURT OF APPEALS OF THE
THIRD APPELLATE JUDICIAL DISTRICT OF OHIO
LOGAN COUNTY

HAROLD C. FOREMAN,

PLAINTIFF-APPELLEE,

vs.

THE CITY OF BELLEFONTAINE, OHIO AND WILLIAM B. SAXBE, ATTORNEY GENERAL,

DEFENDANTS-APPELLANTS.

CASE NUMBER 1072

JOURNAL ENTRY

The court finds sua sponte that inadvertently and contrary to the provisions of Section 2505.071, Revised Code, the judgment of reversal in this cause was entered on the journal of the court on February 9, 1970, while there was still pending an application for reconsideration filed by the appellee on January 21, 1970.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the judgment so inadvertently entered be, and the same hereby is, vacated.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the application for reconsideration filed by the appellee on January 21, 1970, be, and the same hereby is, denied.

IT IS FURTHER ORDERED that the application for separate findings of fact and conclusions of law filed January 22, 1970, be, and the same hereby is, denied.

IT IS FURTHER ORDERED that the application for reconsideration made on February 16, 1970, be, and the same hereby is, denied.

Coming now to enter the findings and judgment based on the decision of this court rendered and filed on January 20, 1970, the court finds that the identical parties hereto litigated the same issues in a prior Cause No. 26270 in the Common Pleas Court of Logan County, Ohio, in 1962; that judgment was rendered in said Cause No. 26270 for the defendant-appellant, City of Bellefontaine, Ohio; that said judgment in Cause No. 26270 was not reversed on appeal and exists as a valid judgment.

The Court further finds that in this Cause No. 28885 in the Common Pleas Court of Logan County, Ohio, there is present in the record all of the essential elements of res judicata; and the parties are hereto bound by the judgment in said Cause No. 26270; and that the trial court erred by not applying the defense of res judicata. On consideration of the labeled cross-appeal filed by plaintiff-appellee, finding that the doctrine of res judicata being dispositive of this appeal, all errors assigned in said labeled cross-appeal are found not well taken or non-prejudicial.

Judgment of the Common Pleas Court of Logan County, Ohio, in Cause No. 28885 is reversed at cost of plaintiff-appellee; and coming now to render the judgment which should have been rendered in said court, judgment is hereby entered in Cause No. 28885 for defendant-appellant, City of Bellefontaine, Ohio, and the cause is remanded to the Common Pleas Court of Logan County, Ohio, for execution as to costs.

/s/ Ralph D. Cole, Jr.

/s/ Harvey G. Straub

/s/ John W. Potter

JUDGES

OPINION AND JOURNAL ENTRIES

APPENDIX B _____

IN THE COURT OF COMMON PLEAS
OF LOGAN COUNTY, OHIO

HAROLD FOREMAN,)
PLAINTIFF,) * CASE NO. 28885
vs.)

OPINION

CITY OF)
BELLEFONTAINE,)
DEFENDANT.)

PLAINTIFF: IN PROPRIA PERSONA
FOR DEFENDANT: Mr. John David West,
City Prosecutor,
Bellefontaine, Ohio.

MC NEILL, J. (By Assignment)

This is an action seeking to have Ordinance 2493, a zoning ordinance of the City of Bellefontaine, declared invalid. Previously a suit was brought by the plaintiff against the City of Bellefontaine, Case No. 26272.

An examination of the records indicates that all the elements necessary for res judicata are present, and Case 26270, decided in 1962, would be determinative of all matters if res judicata is allowed by the Court.

In 1957 the ordinance was passed, with the main portions of the ordinance incorporated by reference, and the zoning map incorporated by reference to the main portions. There is no territorial descriptions in the zoning provisions. The territories are shown only in the map. In 1957 the short form of the ordinance was published. The zoning provisions itself were not published until 1959. The zoning map was not published until January

of this year. In 1967, TIRPACH ZONING ADMR. V. MARRO, et. al., 9 OA 2d 76, 38 00 2d 73, was decided. This held that a zoning ordinance, in which the territory was not delineated in the ordinance, was not effective until the map was published. Although this case was in the 7th District, two members of the 3rd District Court of Appeals participated in the unanimous decision of the court.

Thus, there is no doubt that the ordinance was not effective at least until ten days after its first publication in January of 1959. The problem then is whether the piecemeal publication prevents its effectiveness.

The first publication shows that an ordinance affecting zoning was passed. The zoning code and the ordinance in its complete form as passed in 1959 showed all the terms, but the districts were not shown until the publication of the map in 1969.

There is no time limit set upon publication, but with all statutes, it must be presumed that it was to be done in a reasonable manner. It would appear to this court that twelve years elapse of time is an unreasonable time.

In addition to the time factor is the methpd of publication. The zoning map was printed in January of this year, without any explanation, simply showing a zoning map. There would be considerable doubt in a reader's mind whether this was published by the newspaper as a public service, or whether it was actually a part of an ordinance. In fact, the Court feels a reader would assume the former. The print relating to districts is too small to be read. This would not be fatal if it were printed in connection with the zoning ordinance as the type of district is fully set forth.

Part of the purpose of publication is to advise anybody of their rights of referendum. With this methpd of publication, the map not being tied in with anything else, a

citizen could move to Bellefontaine any time after the 1959 printing and would be entitled to start a referendum, if he were aware that the map had any significance. Of course, he would not even have been a resident of Bellefontaine at the time of its original publication, and could not know of the former publications.

Thus, considering the length of time, the method of publication, and the rendering of rights of the public almost undeterminable, it appears that this publication is not sufficient to breathe validity into the Ordinance of 1957.

Thus, we come to the question of whether or not the court will apply res judicata. If res judicata is applied, any resident of the City of Bellefontaine except this plaintiff could attack the ordinance. This is not a private suit between two parties where there can be no other suits. The situation has arisen because of judicial interpretations that have taken place since the previous suit. To apply res judicata would not be helpful to the City of Bellefontaine. If the ordinance is invalid for the reasons set forth, they would have an opportunity to re-enact it. If this court is incorrect, they would have opportunity to appeal and have a final determination made, or they may desire to pursue both methods, making sure of the re-enactment and also seeking to find it unnecessary.

The application of res judicata would not be helpful to the defendant, as it cannot be applied to other citizens of Bellefontaine, and the Court will not apply it in this case to a single individual.

The Court is reluctant to find any ordinance invalid, and the parties connect therewith have attempted to pursue a proper course. However, later opinions have indicated these requirements are mandatory.

If the Court's determination of the validity had been opposite, the attack would be inconsequential, as the

ordinance would be in effect and res judicata would be applied. However, the Court determining as it has that the ordinance is invalid, res judicata will not be applied.

The Court finds that the ordinance does not conform to the requirements of the law and is invalid. Journal Entry may be prepared and submitted in accordance herewith.

EUGENE R. MC NEILL
Judge (By Assignment)

3-R—SUPREME COURT—File 961
24 Ohio St. 2d) STATE, EX REL., v. COURT.
24 Ohio St. 2d) STATE, EX REL., v. COURT.
24 Ohio St. 2d) STATE, EX REL., v. COURT.

The State, Ex rel. Foreman, v. Court of Appeals for Logan County ET AL.

[Cite as State, ex rel. Foreman, v. Court of Appeals (1970), 24 Ohio St. 2d.]

Mandamus—Remedy not available when—Appeal procedure—Comprehensiveness of reviewing court's findings and decision, discretionary—R. C. 2505.21—Requirements--Refusal of Court of Appeals to certify as conflict—Not reviewable by mandamus action.

(No. 70-98—Decided November 25, 1970.)

In Mandamus.

On Motion to dismiss.

This is an action in mandamus originating in this court. The case is before the court on the second amended petition of relator and a demurrer filed thereto.

The proceedings which gave rise to the present action arose in the Court of Common Pleas as an action filed by relator to declare a zoning ordinance invalid. The city interposed the defense of res judicata, on the ground that the same issue was determined between the same parties in 1962. The trial court refused to apply the de-

fense of res judicata, even though it recognized its existence in this case, and found the zoning ordinance invalid.

The Court of Appeals reversed the Court of Common Pleas, finding that the doctrine of res judicata was applicable, and entered final judgment in favor of the city. An appeal, filed in this court as case No. 70-212, was dismissed on September 24, 1970.

Mr. Harold C. Foreman, in propria persona.

Mr. Paul W. Brown, attorney general, Mr. Shelby V. Huchins and Mr. Thomas V. Martin, for respondents.

Per Curiam. In this action, relator is seeking to require the Court of Appeals to state what the essential elements of res judicata are and where they are found in the record, to state separately its findings of fact and conclusions of law, and to file a journal entry making final the denial of an application to certify the cause as a conflict case.

It is relator's position that the Court of Appeals did not properly set forth its reasons for reversal.

An examination of the court's journal entry shows that the Court of Appeals set forth the prior proceedings between the parties and determined that all the elements of res judicata were present. It is relator's contention that such entry should be more specific.

No such duty is imposed on respondents by R. C. 2505.21 which required that the reviewing court shall state the errors found in the record and the reasons for its decision. Once the court has so specified it has fulfilled its duty under the statute; it is not required to point out where the record substantiates its decision. It is within the sound discretion of the court as to how comprehensive its findings or decision shall be in relation to the analysis of the facts or law upon which it is based.

In respect to relator's request that the court be required to file a journal entry denying the motion to certify as a

conflict case, respondent states that this was done May 19, so this is now moot. The relator also challenges the refusal to certify this cause as a conflict case. Mandamus does not lie to review the refusal of a Court of Appeals to certify a cause as a conflict case. State, ex rel. Wolfe, v. Richards (1933), 127 Ohio St. 63.

Relator argues also that the Court of Appeals should have granted his motion for separate findings of fact and conclusions of law. This is a question that cannot be raised by mandamus; relator has an adequate remedy at law by appeal. State, ex rel. Foreman, v. Common Pleas Court (1965), 1 Ohio St. 2d 175.

The demurrer to the petition, being now treated as a motion to dismiss under the new Rules of Civil Procedure, is sustained and final judgment is entered for respondents.

Judgment accordingly.

O'Neill, C. J., Herbert, Duncan, Corrigan, Stern and Leach, JJ., concur.

Schneider, J., concurs in judgment only.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,

THE STATE OF OHIO, City of Columbus, Harold C. Foreman,

Appellant,

vs.

City of Bellefontaine et al., Appellees.

1970 TERM

To wit: September 24, 1970

No. 70-212

APPEAL FROM THE COURT OF APPEALS for LOGAN County

This cause, here on appeal as of right from the Court of Appeals for LOGAN County was heard in the manner prescribed by law and upon motion of the appellee to dismiss such appeal.

On consideration thereof, such appeal is dismissed.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the COMMON PLEAS COURT to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for LOGAN County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this _____ day of _____ 19__

_____ Clerk

_____ Deputy

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.
Harold C. Foreman,
Appellant.

1970 TERM
To wit: September 24, 1970

No. 70-212

vs.

MANDATE

City of Bellefontaine et al.,
Appellees.

To the Honorable COMMON PLEAS COURT Within and for the County of LOGAN, Ohio, Greeting:

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Appeal dismissed.

THOMAS L. STARTZMAN,
Clerk

_____ 19__

_____Deputy

RECORD OF COSTS

Docket Fee. . . .$2.00 Paid by Harold C. Foreman.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, 1970 TERM
City of Columbus. To wit: October 21, 1970
Harold C. Foreman,
Appellant,

vs. No. 70-212

City of Bellefontaine et al., REHEARING
Appellees.

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No. _____ Page ____
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 21st day of October, 1970.

THOMAS L. STARTZMAN, Clerk.

By _____ Deputy.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.
Harold C. Foreman,
Appellant,

vs.

City of Bellefontaine et al.,
Appellees.

To wit: December 2, 1970

No. 70-212

MOTION TO VACATE
AND REHEARING

It is ordered by the court that rehearing in this case is denied.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said

Court, to wit, from Journal No. _____ Page _____

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 2nd day of December, 1970.

THOMAS L. STARTZMAN, Clerk.

By _____ Deputy.

THE STATE OF OHIO,
City of Columbus.
State of Ohio, ex rel.
Harold C. Foreman,
Relator,

vs.

Court of Appeals for Logan
County et al.,
Respondents.

1970 TERM
To wit: November 25, 1970

No. 70-98

IN MANDAMUS
ON MOTION TO
DISMISS

This cause originated in this court upon the filing of a petition for a writ of mandamus seeking to require the Court of Appeals to state what the essential elements of res judicata are and where they are found in the record, to state separately its findings of fact and conclusions of law, and to file a journal entry making final the denial of an application to certify the cause as a conflict case. The cause is now before the court on a motion to dismiss the second amended petition and was heard in the manner prescribed by law. On consideration thereof, the demurrer being treated as a motion to dismiss, is sustained and final judgment is entered for respondents, for the reasons set forth in the opinion rendered herein.

I, THOMAS L. STARTZMAN, Clerk of the Supreme Court of the State of Ohio, do hereby certify that the foregoing entry was correctly copied from the records of said Court, to wit, from Journal No _____ Page _____ IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Supreme Court this 25th day of November, 1970.

Thomas L. Startzman Clerk.

By Sam F. Adkins Deputy.

APPENDIX C

Section 713.15 RETROACTIVE ZONING ORDINANCES PROHIBITED.

The lawful use of any dwelling, building, or structure of any land or premises, as existing and lawful at the time of enacting a zoning ordinance or amendment thereto, may be continued, although such use does not conform with the provisions of such ordinance or amendment, but if any such nonconforming use is voluntarily discontinued for two years or more, any future use of such land shall be in conformity with sections 713.01 to 713.15, inclusive, of the Revised Code. The legislative authority of a municipal corporation shall provide in any zoning ordinance for the completion, restoration, reconstuc-ordinance for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning ordinance.

Section 731.17 ADOPTION OF ORDINANCES AND RESOLUTIONS. (GC § 4224)

The action of the legislative authority of a municipal corporation shall be by ordinance or resolution the vote shall be taken by yeas and nays and entered upon the journal, but this shall not apply to the ordering of an election, or direction by the legislative authority to any board or officer to furnish the legislative authority with information as to the affairs of any department or office. No bylaw, ordinance, or resolution, of a

general or permanent nature, or granting a franchise, or creating a right or involving the expenditure of money, or the levying of a tax, or for the purchase, lease, sale, or transfer of property, shall be passed, unless it has been fully and distinctly read on three different days, and with respect to any such bylaw, ordinance, or resolution, there shall be no authority to dispense with this rule, except by a three-fourth(s) vote of all members elected to the legislative authority, taken by yeas and nays, on each bylaw, resolution, or ordinance, and entered on the journal. No ordinance shall be passed without the concurrence of a majority of all members elected to the legislative authority.

Section 731.19

SUBJECT AND AMENDMENT OF BYLAWS, ORDINANCES, AND RESOLUTIONS.

(GC § 4226)

No ordinance, resolution, or bylaw shall contain more than one subject, which shall be clearly expressed in its title. No bylaw or ordinance, or section thereof, shall be revived or amended, unless the new bylaw or ordinance contains the entire bylaw, ordinance, or section revived or amended, and the bylaw, ordinance, or section so amended shall be repealed. Each such bylaw, resolution, and ordinance shall be adopted or passed by a separate vote of the legislative authority of a municipal corporation and the yeas and nays shall be entered upon the journal.

Section 731.21

PUBLICATION OF ORDINANCES AND RESOLUTIONS; PROOF OF PUBLICATION AND CIRCULATION.

(GC 4228)

All municipal ordinances, resolutions, statements, orders, proclamations, notices, and reports, require by law or ordinance to be published, shall be published as follows:

(A) In two English newspapers of opposite politics published and of general circulation in municipal corporation, if there are any such newspapers:

(B) If two English newspapers of opposite politics are not pubilshed and of general circulation in the municipal corporation, then in one such political newspaper and one other English newspaper published and of general circulation therein;

(C) If no English newspaper is published and of general circulation in the municipal corporation, then in any English newspaper of general circulation therein or by posting as provided in Section 731.25 of the Revised Code, at the option corporation. Proof of the publication and required circulation of any newspaper used as a medium of publication as provided by this section shall be made by affidavit of the proprietor of either of such newspapers, and shall be filed with the clerk of the legislative authority.

Section 731.22

TIMES OF PUBLICATION REQUIRED.

(GC § 4229).

The publication required in section 731.21 of the

Revised Code shall be for the following times:

(A) Ordinances, resolutions, and proclamations of elections once a week for two consective weeks:

(B) Notices, not less then two nor more then for consecutive weeks:

(C) All other matters shall be published once.

Section 731.26

EFFECT OF NOT MAKING PUBLICATION.

(GC 4233)

It is a sufficient defense to any suit or prosecution under an ordinance to show that no publication or posting was made as required by Sections 731.21 to 731.25, inclusive, of the Revised Code.

Section 2315.25

FALSE AFFIDAVIT OR TESTIMONY: TAMPERING WITH JURY LIST.

No public officer or private individual shall:

(A) Swear falsely in an affidavit, or testify falsely upon an inquiry, made as prescribed in sections 2315.01 to 2315.24, inclusive, of the Revised Code:

(B) Willfully violate, prevent, or hinder the execution of such sections:

(C) Willfully do or omit to do any act with the design to subvert the purposes of such sections.

Section 2701.11

RULES FOR RETIREMENT, REMOVAL AND SUSPENSION OF JUDGES; APPOINTMENT OF COMMISSION.

Subject to rules **implementing sections 2701.11 and 2701.12 of the Revised Code,** that shall be promulgated by the supreme court, **upon written and sworn complaint setting forth the cause or causes** and after **reasonable** notice **therefore** and **an opportunity to be heard,** any judge may be retired for disability, removed for cause, or suspended without pay for cause by a commission composed of **five judges** of **this state**, all of whom shall be appointed by the supreme court **from among judges of the courts of record located within the territorial jurisdiction in each of any five of the appellate districts, not including that within which the respondent judge reside.**

Such a commission shall be appointed by the supreme court upon recepit of a report of its board of commissioners on grievances and discipline that such board has received a written and sworn complaint alleging that cause exists for retirement, removal, or suspension of a judge under section 2701.12 of the Revised Code, and that upon investigation and a finding by at least two-thirds of the members of such board that there is substantional credible evidence in support of such complaint. Any judge so retires, removed or suspended may appeal, issions's action to the supreme court. **The commission, the court, or a judge thereof may affirm reverse, or modify the order of the commission.**

Members of the commission shall be reimburse' from the state treasury for their actual and necessary expense in connection with thier service on the commission.

The adminstrative assistant of the supreme court shall be the secretary of each commission appointed to con-

sider retirement, removal, or suspension of a judge. The secretary shall certify each order of a commission which commands the retirement, removal, or suspension of a judge to the governor, the chief justice of the supreme court, and the officer required by law to draw warrants for payment of the salary of such judges.

Upon the request of any such commission the attorney general shall assist in the performance of its duties.

Section 4705.01

PRACTICE OF LAW; PROHIBITIONS.

No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which he is not a party concerned, either by using or subscribing his own name, or the name of another person, unless he has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules. Admission to the bar shall entitle such person to practice before any court or adminstrative tribunal without further qualifications or license.

No sheriff, deputy sheriff, or coroner shall practice as an attorney at law in any court of this state, and no clerk of the supreme court or court of common pleas, or the deputy of either, shall practice in the particular court of which he is clerk of deputy.

No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or

trust company, or by otherwise engageing in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

A judge may complete any business undertaken by him in the United States district court, the United States circuit court of appeals, or the supreme court of the United States prior to his election as judge.

CONSTITUTION OF THE UNITED STATES

Artical VI, Section 2.

This Constitution and the laws of the United States which shall be made in pursuance thereon and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

Article XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereoff, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX D

(9 Ohio App. (2d) 76.

TIRPACK, ZONING ADMR., APPELLEE VS. MAROET AL., APPELLANTS.

Court of Appeals, Mahoning County.

(No. 4629--Decided January 11, 1967.)

Municipal corporations -- Zoning ordinance -- Boundaries described on accompanying map — Failure to publish map.

Judgement for defendant

1. Municipal Corporations Page § 456.1 Zoning O. Jur 2d § 126.

Where a zoning ordinance of a noncharter municipality, adopted pursuant to the provisions of Chapter 713, Revised Code, does not describe in the text thereof the boundaries of the zones, or districts, thereby to be created but provides, instead, that such districts are bounded and defined on a map identified by title, date and certification which map accompanies this ordinance, and is hereby made a part thereof, in order to comply with the provisions of Sections 731.20, 731.21, and 731.22, Revised Code, pertaining to publication of ordinances before going into operation, it is manadtory that such map be published along with the text of the ordinance.

2. Municipal Corporations Page § 456.1 Zoning O. Jur 2d § 126.

Where such map, incorporated by reference in such manner in a zoning ordinance which does not otherwise

specify the boundaries of the zones or districts, has not been published (77) along with the text of the ordinance, then as prescribed by Section 731.26, Revised Code, it is a sufficient defense to any suit or prosecution under the zoning ordinance to show that no publication of the zoning map was thus made.

Frank Woychik, city solicitor, of Youngstown, for appellee.

Phillip A. Crino, of Youngstown, for appellants.

Guernsey, J. (Presiding). This is an appeal from a judgment of the Common Pleas Court of Mahoning County in an injunction action brought by the Zoning Administrator for the City of Campbell against the defendants, Joseph Maro and Stephen Maro, doing business as Maro Brothers, to enjoin them from operating a filling station, it being claimed that their operation is in violation of zoning ordinance No. 60-2963 of that city adopted January 9, 1960. Upon trial the lower court found the ordinance valid, the operation in violation thereof, and granted a permanent injunction against such operation. The appeal being on questions of law and fact the action is now before this court for trial de novo on the transcript of evidence adduced in the lower court, as stipulated by the parties to this appeal.

The action involves two basic issues: (1) Whether the zoning ordinance is unenforcible against these defendants because, after the adoption thereof, the zoning map was not published along with the text of the ordinance; and (2) whether it is unenforceable against these defendants because the use of the premises for filling station purposes is the continuation of a use existing at the time

of the adoption of the ordinance, which became a non-conforming use by reason of such adoption.

It is undisputed in evidence, and acknowledged by the plaintiff, that the text of zoning ordinance No. 60-2963 contains no laaguage setting forth the boundaries of the respective zones, or use districts, purporting to be created by the ordinance, and that the only reference to such boundaries is Section 42.1 thereof, reading as follows:

(78) "Map: The aforesaid districts are bounded and defined on a map entitled 'Zoning Map of the City of Campbell, Ohio, adopted on the 9th day of January 1960, and certified by the City Engineer and Zoning and Planning Commission, which map accompaniex this ordinance, and is hereby made a part thereof."

It is further undisputed, and acknowledged by the plaintiff, that no map of any character was published along with the text of the ordinance following its adoption on January 9, 1960.

A review of Chapter 713 of the Revised Code reveals no statutes dealing specifically with the manner of, or requirement for publication by municipalities of a zoning ordinance upon its adoption. However, in application to cities not having charters providing otherwise, Sections 731.20, 731.21, 731.22, and 731.26 of the Revised Code provide in pertinent parts as follows:

Section 731.20 "* * * Ordinance of a general nature * * * shall be published as provided by sections 731.21 and 731.22 of the Revised Code before going into operation. No ordinance shall take effect until the expiration of ten days after the first publication of such notice.* * *"

Section 731.21. "All municipal ordinances * * * required by law or ordinance to be published, shall be published as follows:

"* * *"

Section 731.22. "The publication requires in section 731.21 of the Revised Code shall be for the following times:

"(A) Ordinances * * * once a week for two consecutive weeks;

Section 731.26 "It is a sufficient defense to any suit or prosecution under an ordinance, to show that no publication or posting was made as required by sections 731.21 to 731.25, inclusive, of the Revised Code."

It follows from those statues that zoning ordinances, being ordinances of general nature, shall be published once a week for two consecutive weeks before going into operation, and if not so published, it is a sufficient defense to any suit or prosecution under such ordinance to show that no publication was made.

(79) Those and other sections were construed by Judge Turner in State v. Waller (1944), 143 Ohio St., 409, 28 0.0. 351, as not prohibiting, in an ordinance which would be unintelligible when standing alone, the incorporation by reference of some statute or other ordinance an examination of which will make the ordinance in question intelligible. In such event, however, the ordinance or, as held in the Waller case, the regulation, must be published in full including a full publication of the matters so incorporated. The courts of Ohio, so far as we have been able to determine, have made no specific determination as to the requirements of publishing a map incorporated by reference. Judge Turner alludes to this problem in the Waller case, at page 415 (of 143 Ohio St., page 354 of 28 0.0):

"Exceptions are to be found, however, where the ordinances establish the grades of streets and refer to map and books on file in the archives of the city. See City of Napa v. Easterby, 76 Cal. 222, 18 P. 253. The same might

be said of other ordinances referring to maps, specifications, and other data on file in a public office in respect of the letting of contracts. However, we have no such questions before us." (Emphasis added.)

The only reference we find in Chapter 713 of the Revised Code to maps, their filing or disposition, are those contained in Section 713.12 relating to the hearing before adoption and reading as follows:

"* * * During such thirty days (prior to hearing) the text or copy of the text of such ordinance, measure, or regulation, together with the maps or plans or copies thereof forming part of or referred to in such ordinance, measure, or regulation and the maps, plans, and reports submitted by the planning commission, board, or officer shall be on file, for public examination, in the office of the clerk of the legislative authority or is such other office as is designated by the legislative authority.* * * "

It will be observed from those provisions, and from the lack of other provisions, that, insofar as the statues of Ohio pertaining to municipal zoning are concerned, it would be possible to have a zoning ordinance without any maps, that there may be several maps involved in the proceedings prior to adoption of a zoning ordinance, and that there is no provision for any zoning map, as such, to be adopted, nor any provision requiring or determining the place of filing of a zoning (80) map after the adoption of a zoning ordinance. We also do not find any provision in the zoning ordinance itself providing for the fact or place of filing of the zoning map after the adoption in a public archive or public office. In Village of Durrand v. Love (1931), 254 Mich. 538, 236 N.W. 855, the Supreme Court of Michigan said, at page 540:

"An ordinance sometimes may refer to a public record already established by lawful authority and become effective without publication of such record as part of the ordinance. But Exhibit A was drafted solely for the pur-

pose of the ordinance and to define the fire limits, had no prior official approval and had no purpose, use, force, or official sanction except as it was given by and as part of the ordinance. An Ordinance cannot at the same time establish a paper as a public record and also incorporate it by reference as a previously established public record. Without publication of the map, the ordinance was not published in full, did not comply with the statute, and is void.* * * "

Further illustrative of the uncertainty and the problems here raised is the testimony of Katherine L. Garman, Clerk of Council of the city of Campbell, wherein she identifies plaintiff's Exhibit 4 (a black and white printed map) as "a zoning map of the city of Campbell" and as "part of the Ordinance 60-2963," and later identifies plaintiff's Exhibit No. 44 (consisting of 22 colored sheets) as "a map of the city of Campbell," of which Exhibit 4 is a "replica" of the first page. When asked if Exhibit 44 was the map presented at the public hearing to the proponents and opponents of the zoning plan, her reply was ambiguous, "Well, Mr. Woychik, I do know at the time of the public hearing I was, of course, busy taking notes; I do know that reference was made to the various colors on the map designating the different zones." She then testified that Exhibit 4 "is the identical map that was submitted to council by the Zoning and Planning Commission as reflected by your (her) minutes," and that Exhibit 44 "was submitted as part of the exhibits at the public hearing showing a more detailed map of the city of Campbell." The minutes of the meeting of council of January 9, 1960 (plaintiff's Exhibit 3), show that amendments to the "map" were adopted by council prior to the final pas-(81) sage of the zoning ordinance, and plaintiff's Exhibit 4, though titled "Zoning Map City of Campbell Ohio" and certified by Oen Theodore Dastol, presu-

mably the City engineer, does not contain any certification by any "Zoning and Planning Commission" as provided in Section 42.1 of the zoning ordinance.

The plaintiff has contended, citing Burmore Co. v. Smith (1940), 124 N. J. Law 541, 12 A. (2d) 353, and City of Newbury-port v. Thurlow (1949), 324 Mass. 40, 84 N.E. (2d) 450, that publication of the zoning map along with the text of the ordinance is not required by law. However, in the Burmore case the map was on file and it was not specifically made a part of the ordinance by reference or otherwise. Compare, also Slattery v. Township of Caldwell (1964), 83 N.J. Super. 317, 199 A. (2d) 670. In the City of Newburyport case the map was not specifically made a part of the ordinance by reference or otherwise, and the court made no comment or decision as to the requirements of publication. Compare inhabitants of West Springfield v. Mayo (1928), 265 Mass. 41 163 N.E. 653.

On the other hand, the majority rule, the best rule, and the rule which we find applicable, is set forth in the syllabus of the Supreme Court of Nebraska in the case of Board of County Commissioners of County of Sarpy v. McNally (1959). 168 Neb. 23, 95 N.W. (2d) 153:

"1. The statutory provision, referred to in the opinion that a zoning resolution adopted by a county board shall be published in book or pamphlet form or in a newspaper published and of general circulation in the county is mandatory."

"2. The statutory provision mentioned above requires that the entire zoning resolution, including any map, plat, or zoning plan attached to, made a part of, or referred to in the resolution, must be published."

"3. A failure to comply with the statutory provision mentioned above prevents a zoning resolution from becoming valid, effective, or enforceable."

(82) In that case, as here, the text of the resolution did not describe the bounderies of the districts, but contained the language, "The boundaries of such districts are hereby established as shown of the Zoning Plan which accompanies and is hereby made a part of this regulation." The zoning plan, or map, was never published along with text of the resolution. In his opinion, Mr. Justice Boslaugh fully discusses and grounds his conclusions on decisions of similar nature from the states of Alabama, Arkansas, California, Connecticut, Michigan, Minnesota, New York, Pennsylvania, and Tennessee. In addition to the decisions he thus cites should be cited the later

"4. It cannot be presumed that a county zoning resolution was published in the manner provided by law when the proof establishes it was not."

"5. Invalid legislation confers no rights and imposes no duties of obligations. Legally it is as though it had never been composed or adopted."

cases of Keeney v. Village of LeRoy (1964), 22 App. Div. (2d) 159, 254 N.Y.S. (2d) 445, and Lavitt v. Pierre (1964), 152 Conn. 66, 203 A. (2d) 289. It will also be observed that in the 1964 decision of DiPonio v. Cockrum (1964), 373 Mich. 115, 128 N.W.(2d) 544, the Supreme Court of Michigan arrived at a view contrary to that indicated by the case of Villege of Durand v. Love (1931), 254 Mich. 538, 236 N.W. 855, cited in this opinion, Supra, and also in the McNally case. However, this 1964 decision (Diponio) was based on specific provisions of the Michigan statutes "that the publication of maps and other data pertinent to any such ordinance shall not be required to be made, but the publication of the ordinance shall state the place where the maps and other information are available for examination." See, also, County of Winnebago v. Niman (1947), 397 Ill. 37, 72 N.E. (2d) 818, and County of Winnebago v. Cannell (1941), 376 Ill. 277, 33 N.E.(2d) 478.

Specifically applied to the facts and the issues joined herein, we therefore, conclude that where a zoning ordinance of a noncharter municipality, adopted pursuant to the provisions of Charter 713, Revised Code, does not describe in the text thereof the boundaries of the zones, or districts, thereby to be created, but provides, instead, that such districts are bounded and defined on a map identified by title, date and certification, "which map accompanies this ordinance, and is hereby made a part thereof," in order to comply with the provisions of Section 731.20, 731.21, and 731.22, Revised Code, pertaining to publication of ordinances before going into operation, it is mandatory that map be published along with the text of the ordinance, and when it has not been so published, then, as prescribed by (83) Section 731.26, Revised Code, it is a sufficient defense to any suit or prosecution under the zoning ordinance to show that no publication of the zoning map was thus made.

Upon such conclusions, the judgement of this court must be for the defendants and the petition of the plaintiff must be dismissed at his costs. Such conclusions make moot any suppose issue raised by the pleadings or the evidence as to whether the use of the premises by the defendants was in violation of the requirements set forth in the ordinance. This being an appeal on questions of law and fact the judgement of the Common Pleas Court for the plaintiff is superseded by the judgement of this court for the defendent.

Judgement for defendant and petition dismissed.

Younger and Gray, JJ., concur.

Younger, P.J., and Guernsey, J., of the Third Appellate District, and Gray, J., of the Fourth Appellate District, sitting by designation in the Seventh Appellate District.

IN THE COURT OF APPEALS, LOGAN COUNTY
OHIO

HAROLD C. FOREMAN
124 EAST SPRING AVE.,
BELLEFONTAINE, OHIO

PLAINTIFF-APPELLEE

v.

THE CITY OF BELLEFONTAINE,
A MUNICIPAL CORPORATION,
BELLFONTAINE, OHIO

CASE NO. 1072

DEFENDANT-APPELLANT, AND

WILLIAM B. SAXBE,
THE ATTORNEY GENERAL OF OHIO,

AMICUS CURIAE

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES.

1. Notice is hereby given that Harold C. Foreman, the appellee above named, hereby appeals to the Supreme Court of the United States from the final order and judgement of the Court of Appeals, Logan County, State of Ohio, dated March 2, 1970, reversing the judgement of the Court of Common Pleas, Logan County, Ohio, wherein trial Court Found Ordinance No. 2493 of the City of Bellefontaine invalid as to business property owned by plaintiffs; from the final order of the Supreme Court of Ohio dated September 24, 1970, dismissing the appeal; from the order denying rehearing dated December 2

1970, and from Case No. 70-98, an orginal action filed in the Supreme Court of Ohio for a Writ of Mandamus which final judgement dated November 25, 1970, is co-incidental to this primary case.

This appeal is taken pursuant to 28 USC § 1257(2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

(a) The petition filed in case No. 28885, answer of defendant, all original papers, and the opinion and Journal Entry of the Court.

(b) All original papers, including all pleadings by both parties, the Bill of Exceptions including all exhibits of both parties, and all opinions and Journal Entries of the Court of Appeals.

(c) The order and mandate of the Supreme Court of Ohio date September 24, 1970, and the order denying rehearing dated December 2, 1970.

(d) This Notice of Appeal, including proof of service.

III. The following questions are presented by this appeal:

(a) Whether the taking by the City of Bellefontaine of appellant's business property herein involved was, on the facts presented in the record, a deprivation of his property without due process under the Fourteenth Amendment to the United States Constitution?

(b) Whether the taking by the City of Bellefontaine of appellant's business property herein involved was, on the facts presented in the record, a denial of equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States Constitution?

(c) Whether Section 713.15, Ohio Revised Code, is unconstitutional upon its face in that it deprives appellant of his business property involved herein without

due process and denies appellant equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States?

(d) Whether the mere comment by the trial judge in the Journal Entry, quote "and the court do find tha the issues in this case, and in Case No. 26270 are identical;" without evidence to support that the issues were fully determined upon their merits in the former case, is ground for reversing the judgment of the trial that Ordinance No. 2493 is invalid and unconstitutional, is repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States.

(e) Whether the refusal of the Court to state in the record its conclusions of facts separate from the conclusions of law as is mandatory in Section 2505.30, Ohio Revised Code, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(f) Whether the refusal to certify the record to the Supreme Court of Ohio for final determination in a case that the Court is fully aware that its decision is in conflict with the decision of a different Court of Appeals on the same issue, evidence, facts and applicable laws, is repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States?

(g) Whether it is repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States and the Cannons of Judicial Ethics for the judges to resort to fraud and deceit in rendering an opinion and preparing the Journal Entry, willfully and knowingly?

Harold C. Foreman,
Appellant in propria persona,
124 East Spring Ave.,
Bellefontaine, Ohio 43311
Phone 513-592-6607

PROOF OF SERVICE

I, Harold C. Foreman, appellant in propria persona herein, hereby certify that on the 10th day of December, 1970, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on James B. West, City Solicitor, and attorney of record for the appellee herein, 111 South Madriver St., Bellefontaine, Ohio, 43311 and on Paul W. Brown, Attorney General of Ohio, State Capitol Annex, Columbus, Ohio. by United States Certified Mail, return receipt requested, in duly addressed envelopes, with postage prepaid.

Harold C. Foreman
Appellant in propria persona,
124 East Spring Ave.,
Bellefontaine, Ohio

IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO, ex rel.,
HAROLD C. FOREMAN,
124 EAST SPRING AVE.,
BELLEFONTAINE, OHIO

RELATOR-APPELLANT

V.

COURT OF APPEALS OF LOGAN
COUNTY, OHIO, AND RALPH D. COLE, JR.,

CASE NO. **70-98**

AND HARVEY G. STRAUB, AND JOHN W. POTTER, JUDGES OF SUCH COURT
RESPONDENTS-APPELLEES

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

I. Notice is hereby given that Harold C. Foreman, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Ohio, dismissing relator's petition for a Writ of Mandamus directing and ordering the respondents herein to comply with Article IV, Section 6 of the Ohio Constitution, Rule III of the Rules of the Supreme Court of Ohio, Section 2505.21, Ohio Revised Code, and Section 2505.30, Ohio Revised Code, entered in this action on November 25, 1970.

This appeal is taken pursuant to 28 USC § 1257 (2).

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The original petition, first and second amendment thereto.

2. All three demurrers; all briefs in support of demurrers and all briefs opposing demurrers.

3. All orders of the Supreme Court of Ohio.

4. The opinion and judgment of the Supreme Court of Ohio dated and entered herein on the 25th day of November, 1970.

5. This Notice of Appeal, including proof of service.

6. This case being coincidental to and being incorporated into and made a part of case No. 70-212, Foreman, appellant v. City of Bellefontaine, et al., on appeal to the Supreme Court of Ohio, include in said transcript all original papers, pleadings, order of the Court dated September 24, 1970, Mandate dated September 24, 1970, order denying motion for rehearing dated October 21, 1970, order denying motion to vacate and rehearing dated December 2, 1970.

III. The following questions are presented by this appeal:

1. Whether the refusal by the Supreme Court of Ohio to order the Court of Appeals, Logan County, Ohio, to state in the record its conclusions of facts separate from its conclusions of law pursuant to Section 2505.30, Ohio Revised Code, is repugnant to the due process clause of the Fourteenth Amendment of the United States Constitution.

2. Whether the refusal by the Supreme Court of Ohio to order the Court of Appeals, Logan County, Ohio, to pass upon all errors assigned and briefed; to state in the Entry, without reservation, whether or not the record shows all the issues were decided upon their merits in the former casue No. 26270; and whether or not the applicable laws were applied to the issues as is mandatory under the provisions of Section 2505.21, Ohio Revised Code, is a denial of the equal protection of the laws and is repugnant to the due process of law clauses of the Fourteenth Amendment to the United States Constitution.

3. The Ohio Supreme Court being fully aware that conflicting decisions by two different Ohio Courts of Appeals, Case No. 4629, Seventh Appellate District, Case No. 1072, Third Appellate District, on the same issues, the same evidence, the same facts, and the same appli-

cable laws, whether it is a deprivation of their property without due process and a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution, when the Ohio Supreme Court refuses to order the record certified for a final determination of the issues and applicable laws.

4. The Judges of the Supreme Court of Ohio and the Attorney General of Ohio are all fully aware that the Judges of the Court of Appeals, Logan County, Ohio, resorted to fraud and deceit in rendering their opinion and judgment in reversing the judgment of the Court of Common Pleas, Logan County, Ohio, therefore, with the former hiding behind their responsibility, it is proper to invoke the supervisory and disciplinarian powers vested in this Court.

Harold C. Foreman,
IN Propria Persona,
124 East Spring Ave.,
Bellefontaine, Ohio 43311
Phone 513-592-6607

PROOF OF SERVICE

I, Harold C. Foreman, appellant herein, hereby certify that on the 10th day of December, 1970, I served a copy of the foregoing Notice of Appeal to the Supreme Court of the United States on Paul W. Brown, Attorney General of Ohio and attorney of record for the respondents herein, State Capitol Annex, Columbus, Ohio, by Certified United States Mail, return receipt requested, in a duly addressed envelope, with postage prepaid.

Harold C. Foreman,
Appellant in propria persona,
124 East Spring Ave.,
Bellefontaine, Ohio